



**IT IS ORDERED as set forth below:**

**Date: September 07, 2010**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	:	CHAPTER 7
	:	
<b>ORALYNETTA ANDREA JORDAN,</b>	:	<b>BANKRUPTCY CASE</b>
	:	<b>NO. 09-86613-MGD</b>
Debtor,	:	
-----	:	
<b>ORALYNETTA ANDREA JORDAN,</b>	:	<b>ADVERSARY CASE</b>
	:	<b>NO. 10-06260</b>
Plaintiff,	:	
	:	
v.	:	
	:	
<b>HSBC BANK OF NEVADA, N.A.,</b>	:	
	:	
Defendant.	:	
-----	:	

**ORDER DENYING MOTION FOR DEFAULT JUDGMENT**

This case is before the Court on Oralynetta Andrea Jordan's ("Plaintiff") Motion for Default Judgment ("Motion"). (Docket No. 4). Plaintiff commenced the underlying adversary proceeding against HSBC Bank of Nevada, N.A. ("Defendant") on June 8, 2010. Plaintiff seeks to avoid an alleged transfer by Plaintiff to Defendant under 11 U.S.C. § 522(h). Defendant did not file an answer

and an entry of default was made. Because the complaint fails to allege facts sufficient for the Court to award a default judgment, the Plaintiff's Motion is **DENIED**.

The Court has discretion as to the entry of a default judgment. Federal Rule of Civil Procedure 55(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7055, provides that the court *may* enter judgment by default (emphasis added). “[A] defendant’s default does not in itself warrant the court in entering default judgment. There must be a sufficient basis in the pleadings for the judgment entered.” *Nishimatsu Constr. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988), *cert. denied*, 493 U.S. 858 (1989); *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985).

Section 522(h) allows the debtor to avoid any transfer of the interest of the debtor in property if the trustee does not attempt to avoid such a transfer. A debtor may use § 522(h) if the transfer could have been exempted under § 522(g)(1) and the transfer is avoidable under §§ 544, 545, 547, 548, 549 or 724(a) or recoverable by the trustee under § 553. 11 U.S.C. § 522(h). Plaintiff asserts that the alleged transfer is avoidable as a preference under § 547(b). (Complaint, ¶ 13).

The complaint fails to set forth sufficient facts to make out each of the essential elements of a preference claim under § 547(b), and, therefore Plaintiff is not entitled to judgment in her favor. Rule 8 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7008, provides that “each allegation must be simple, concise, and direct.” FED. R. CIV. P. 8(d)(1). The Supreme Court has explained that while this does not require “detailed factual allegations,” a pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929. “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*,

550 U.S. at 557). Instead, the complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570.

There are five elements of a *prima facie* preference claim:

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made-
  - (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if-
  - (A) the case were a case under chapter 7 of this title;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b). Plaintiff’s complaint fails to address the “liquidation test” in subsection (5), and there are no facts to support the timing element requirement in subsection (4). Paragraphs 12 and 13 of the complaint simply recite the statutory language “within 90 days before the date of the filing of the bankruptcy petition.” No factual detail regarding the nature of the alleged transfer is included in the complaint. The complaint doesn’t provide a date certain or range of dates for the transfer; nor does it provide any factual enhancements to identify the transfer and to allow the court to reach legal conclusions regarding the alleged transfer. The reliance on recitations of statutory language without adequate factual statements in the complaint makes judgment in favor of Plaintiff unwarranted. Accordingly, it is

**ORDERED** that Plaintiff’s Motion for Default Judgment is hereby **DENIED**.

The Clerk is directed to serve a copy of this Order upon Plaintiff and Defendant.

**END OF DOCUMENT**

